

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6680

Petition of New England Power Company)
for Authority to Abandon Electric Service)

Order entered: 6/26/2002

I. INTRODUCTION

On April 12, 2002, New England Power Company ("NEP") filed a petition with the Public Service Board ("Board") requesting that the Board authorize the abandonment of electric service currently provided by NEP to American Paper Mills of Vermont Inc. ("APM") located in Gilman, Vermont, pursuant to Special Contract No. 431. In support of its petition, NEP has asserted that it does not have a service territory in Vermont and that it currently operates in the service territory of Central Vermont Public Service Corporation ("CVPS") with the consent of CVPS.¹ NEP also has represented that it has and will work with CVPS in order to assure that an alternate reliable electrical service provider will be available to APM.² NEP has requested that the Board determine under 30 V.S.A. § 231(b) that the abandonment of electrical service to APM is consistent with the public interest.

On June 20, 2002, the Board appointed me, Judith M. Kasper, as Hearing Officer (to succeed Kurt R. Janson in that capacity).

A prehearing conference was held in this docket on May 9, 2002. Present were June Tierney, Esq., appearing for the Vermont Department of Public Service ("Department"), Nancy S. Malmquist, Esq., appearing for NEP, and Kenneth Picton, Esq., appearing for CVPS. Although the Board provided APM proper notice of this proceeding, APM did not appear at the prehearing conference, nor has APM filed an appearance in this docket. However, as apparent

1. Petition, p.1.

2. Petition, pp. 1-2; pefiled testimony of Donald E. Rondeau, p. 7.

from the findings below, APM already has agreed to the subject request by NEP for authorization to abandon electric service.³

At the prehearing conference, the parties represented that they would attempt to resolve this docket by agreement.⁴ This was accomplished, and the terms of that settlement are set forth in a Proposal for Decision filed by NEP on June 20, 2002 ("NEP's PFD").

In addition, on June 20, 2002, CVPS made a filing in support of NEP's PFD that includes copies of the following: (1) an executed Term Sheet between NEP and CVPS; (2) a proposed special contract provided by CVPS to APM; and (3) a letter from CVPS to APM that describes the deposit and rate alternatives that CVPS is prepared to make available to APM in the event that NEP is authorized to abandon electric service to APM.⁵

The Department has recommended approval of NEP's PFD without further hearing or investigation.⁶ Similarly, CVPS has waived its rights to review NEP's PFD, and to file exceptions thereto.⁷ Both the Department and CVPS have waived their rights pursuant to 3 V.S.A. Section 811, to present briefs and oral argument in this case, provided that the Board order issued in this docket is substantially consistent with NEP's PFD.⁸

Based on the record in this docket, as well as NEP's PFD and documents filed in support thereof, I hereby report the following to the Board in accordance with 30 V.S.A. § 8.

II. FINDINGS

1. NEP is a Massachusetts corporation that owns and operates properties in several Vermont communities used primarily for the transmission of electricity. NEP is qualified to transact business in Vermont as a foreign corporation. NEP's PFD, p. 2.

2. On March 1, 1941, Gilman Paper Company ("Gilman") and Connecticut River Power Company ("Connecticut River") entered into a contract for the continued purchase by Gilman

3. See Finding number 7, below.

4. Tr. 5/9/02, pp. 4-5.

5. Letter of Kenneth C. Picton, with attachments, 6/19/02.

6. Letter of June E. Tierney, 6/24/02.

7. Letter of Kenneth Picton, 6/24/02.

8. Letter of Kenneth Picton, 6/24/02; Letter of June E. Tierney, 6/24/02.

from Connecticut River of electricity to supplement Gilman's own hydro generation. In 1950, NEP succeeded to the interests of Connecticut River and continued selling electricity to Gilman under the 1941 Contract. In 1967, Georgia Pacific Corporation ("Georgia Pacific") succeeded to the interests of Gilman; in 1990, Simpson Paper Company ("Simpson") succeeded to the interests of Georgia Pacific; and in 2000, APM succeeded to the interests of Simpson. NEP's PFD, p. 2.

3. The current contract between the parties was first executed by NEP and Simpson on May 1, 1992, pursuant to which NEP agreed to continue to sell and Simpson agreed to continue to purchase electricity to supplement Simpson's own hydro generation. This Special Contract was approved for a three-year term by Order of the Board dated April 24, 1995. The term was extended for another three years to April 30, 1998, by Order of the Board dated July 19, 1995. The Board then approved two additional extensions, the second of which expired on December 31, 1999. NEP's PFD, p. 2.

4. By letter agreement dated September 16, 1999 (the "1999 Letter Agreement"), NEP and Simpson agreed to extend the term again to December 31, 2000. However, the 1999 Letter Agreement acknowledged that the announced potential sale of Simpson could substantially affect the nature or level of service that NEP provides, and could affect the appropriateness of NEP's continued service to Simpson. The 1999 Letter Agreement also acknowledged that, pursuant to restructuring settlements in Massachusetts, Rhode Island and New Hampshire, NEP has an obligation to divest itself of its remaining generating assets and transition out of the power supply business. As stated in the 1999 Letter Agreement, NEP only extended the term of the Special Contract so that Simpson would have electricity until a more permanent power supply could be established. Accordingly, the 1999 Letter Agreement added a provision to the Special Contract that it could be terminated upon any of the following conditions:

- (1) Issuance of an Order by the [Board] which authorizes Simpson to directly procure electricity from the competitive electric power market;
- (2) Arrangement with a local Vermont utility to serve the electrical load of Simpson; or
- (3) Approval by the [Board] of a subsequent special contract between Simpson and NEP governing the supply of electricity to Simpson.

The Board approved the 1999 Letter Agreement by Order dated December 15, 1999. NEP's PFD, pp. 2-3.

5. In 2000, Simpson was acquired by APM. By letter agreement dated October 5, 2000 (the "2000 Letter Agreement"), NEP and APM agreed to extend the term to December 31, 2001. The 2000 Letter Agreement again acknowledged NEP's obligation to divest itself of its remaining generating assets and transition out of the power supply business. The 2000 Letter Agreement also anticipated NEP and APM working together during the term of the agreement to see if alternative arrangements for power supply could be made prior to the termination date of December 31, 2001. The 2000 Letter Agreement was approved by the Board on December 14, 2000. NEP's PFD, p. 3.

6. By letter agreement dated December 19, 2001 (the "2001 Letter Agreement"), NEP and APM agreed to extend the term one last time to June 30, 2002. The 2001 Letter Agreement once again acknowledged NEP's obligation to divest itself of its remaining generating assets and transition out of the power supply business and also again anticipated NEP and APM working together during the term of the agreement to see if alternative arrangements for power supply could be made prior to the termination date of June 30, 2002. The 2001 Letter Agreement also included a waiver of Board Rule 3.400, allowing NEP to disconnect electric service to APM's facility no earlier than seven (7) days after the date on which any payment by APM to NEP was due, if APM fails to make such payment on that date. The 2001 Letter Agreement was approved by the Board on January 16, 2002. NEP's PFD, p. 4.

7. As stated in the 1999 Letter Agreement, the 2000 Letter Agreement and the 2001 Letter Agreement, NEP only extended the term of the Special Contract so that Simpson/APM would have electricity until a more permanent power supply could be established. Additionally, in the 2001 Letter Agreement, APM agreed to the abandonment of electric service as of June 30, 2002. NEP's PFD, p. 4

8. NEP has been serving Simpson and now, APM, with the consent of CVPS, the Vermont electric utility in whose service territory APM is located. NEP has explored with CVPS the terms under which CVPS would be able to provide service to APM upon the expiration of the Special Contract (midnight, June 30, 2002). NEP's PFD, p. 4.

9. NEP and CVPS entered into the Term Sheet dated as of June 11, 2002, pursuant to which CVPS and NEP have agreed to terms in order for CVPS to provide service to APM effective July 1, 2002. NEP's PFD, p. 4.

10. Pursuant to the terms of the Term Sheet, NEP has agreed to transfer to CVPS, at no cost, ownership of the section of the 34.5 kV transmission line (including all plant comprising such section of transmission line, such as wires, poles, arms, insulators, clamps, breaker station, grounds, etc.) beyond Pole 154 to the CVPS Gilman substation and up to the APM substation. This transfer to CVPS shall include all existing equipment associated with this section of the transmission line, including but not limited to all Potential Transformers and Current Transformers used in metering APM's station service load, and the Gilman Automatic Breaker 150. NEP's PFD, p. 5.

11. NEP has also agreed to transfer to CVPS, to the extent legally possible, any rights NEP may have, if any, in the deeds and easements shown in Schedule A attached to the Term Sheet. NEP's PFD, p. 5.

12. NEP has agreed to transfer to APM, at no cost, the ownership of the NEP-owned 34.5/2.4 kVA transformers at the APM Substation. Alternatively, if APM requests NEP to remove transformers, NEP has agreed to comply with APM's request. NEP's PFD, p. 5.

13. NEP has agreed to install new or modify existing meters to meter deliveries at the Switch 333 delivery point. NEP's PFD, p. 5.

14. CVPS has agreed to submit a Load Asset Transfer Letter to the Market Registration Agent, ISO New England, accepting 100% of APM Load (Asset ID No. 971) in accordance with NEPOOL Market Rules and Procedures No. 20-1. NEP's PFD, p. 5.

15. NEP has agreed to remain liable for, and shall indemnify CVPS against, any liability arising solely from any environmental issue arising from an act or event occurring before the assets are transferred; provided, that NEP shall have no liability or indemnification obligation for any environmental issue arising from an act or event occurring after the assets are transferred. NEP's PFD, pp. 5-6.

16. On May 29, 2002, at the request of APM's agent, David Blanchette, CVPS forwarded by facsimile a draft Special Contract to Mark Smith, Vice President of APM. The draft Special

Contract provides for a deposit to be provided to CVPS equal to 50% of the usual deposit required under CVPS Electric Service Tariff V.P.S.B. No. 6 Transmission Service Rate 5 ("Rate 5"). In return for the lower required deposit, CVPS would be able to bill APM on a weekly basis and terminate service if any bill remains unpaid for seven days after billing. NEP's PFD, p. 6.

17. On June 6, 2002, CVPS sent by facsimile a letter to Mr. Smith, describing the alternatives available to APM in the event NEP terminates service to APM. The letter provided:

[CVPS'] understanding of the alternatives available to APM is: upon NEP's discontinuing service to APM, to which APM has agreed in its letter filed with the Public Service Board, APM will (1) take service under CVPS' tariff, which will require a prepaid deposit of approximately \$200,000, (2) take service pursuant to the Special Contract, which accelerates billing, payment and disconnection procedures in return for a lower deposit of approximately \$100,000 from APM, or (3) have no service until either (1) or (2) is satisfied. CVPS will not provide service to APM without an appropriate deposit.

NEP's PFD, p. 6.

18. APM shall be charged the CVPS Rate 5 rate for capacity and energy taken by APM regardless of whether APM takes service under CVPS' tariff or pursuant to special contract. Tr. 5/9/02, pp. 11-12; Attachment to 5/29/02 Letter of Kenneth C. Picton - Draft Special Contract, Articles V and VII.

19. CVPS Rate 5 is higher than the rate currently being paid by APM to NEP, however, this difference in rates can be reduced or entirely eliminated by APM through management by APM of its on-site generation. Tr. 5/9/02, pp. 11-12, 16-17; Letter of Kenneth C. Picton - Draft Special Contract, Articles V and VII; Exh. NEP/CVPS Joint-1.

20. As of June 19, 2002, CVPS had received no communication from Mr. Smith or APM regarding the provision of service by CVPS. NEP's PFD, p. 6.

21. Unless APM elects to pay the standard deposit and take standard service under Rate 5, CVPS anticipates filing a Special Contract for expedited approval by the Board. NEP's PFD, p. 6.

III. CONCLUSION AND RECOMMENDATION

Pursuant to 30 V.S.A. Section 231(b), the Board may allow an electric service company to abandon service upon finding that such abandonment is consistent with the public interest. Based on my review of the record in this docket, as well as NEP's Proposal for Decision and documents filed in support thereof, I am persuaded that NEP's proposed abandonment of service to APM is consistent with the public interest.

NEP has requested approval to abandon service to APM because NEP has an obligation to divest itself of its generating assets and transition out of the power supply business.⁹ Also, NEP and APM already have agreed that NEP may terminate service to APM if arrangement is made with a local Vermont utility to serve APM's electrical load, and NEP has made arrangements with CVPS that will enable CVPS to serve APM.¹⁰ Moreover, CVPS is willing to facilitate initiation of service to APM by entering into a special contract (subject to Board approval) which will allow APM to pay a reduced deposit in exchange for accelerated billing, payment and disconnection procedures.¹¹ Finally, although CVPS' rates will be higher than those currently being paid by APM to NEP, this difference in rates can be reduced or entirely eliminated by APM through APM's own management of its on-site generation.¹²

Accordingly, I recommend that the Board approve NEP's petition for authority to abandon service to APM. I also recommend that NEP and CVPS be required to file with the Board notice of completion of the transfer of equipment as contemplated by the Term Sheet.¹³

This Proposal for Decision has not been circulated to the parties because all parties to this docket have waived the opportunity to comment on a proposal for decision, pursuant to 3 V.S.A. Section 811.

9. Finding number 4, above.

10. Finding numbers 4 and 9, above. CVPS also has agreed to submit a Load Asset Transfer Letter to the Market Registration Agent, ISO New England, accepting 100% of APM Load (Asset ID No. 971) in accordance with NEPOOL Market Rules and Procedures. Finding number 14, above.

11. Finding numbers 16 and 17, above.

12. Finding number 19, above.

13. See Finding numbers 9 through 15, above.

DATED at Montpelier, Vermont, this 26th day of June, 2002.

s/Judith M. Kasper
Judith M. Kasper, Esq.
Hearing Officer

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and conclusions of the Hearing Officer are adopted.
2. The abandonment of electric service currently provided by New England Power Company ("NEP") to American Paper Mills of Vermont Inc., in Vermont, is consistent with the public interest.
3. New England Power Company is authorized to abandon electric service that it currently provides to American Paper Mills of Vermont, Inc., in Vermont.
4. Within seven (7) days of the date that the transfer of equipment as contemplated by the Term Sheet is completed, NEP and Central Vermont Public Service Corporation ("CVPS") shall file notice of such transfer with the Board. In the event that such transfer is not completed by October 1, 2002, NEP and CVPS shall file with the Board, on or before October 7, 2002, notice of the status of the transfer process.

Dated at Montpelier, Vermont, this 26th day of June, 2002.

s/Michael H. Dworkin)
) PUBLIC SERVICE
)
_____) BOARD
)
) OF VERMONT
s/John D. Burke)

OFFICE OF THE CLERK

Filed: June 26, 2002

Attest: s/Susan M. Hudson
Clerk of the Board

Notice to readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone or in writing) of any apparent errors, in order that any necessary corrections may be made (E-mail address: Clerk@psb.state.vt.us).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.